UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STATION GVR ACQUISITION, LLC d/b/a
GREEN VALLEY RANCH RESORT SPA CASINO

and **Cases 28-CA-211043**
28-CA-216411

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 501, AFL-CIO

RESPONSE TO GENERAL COUNSEL'S MOTION TO TRANSFER AND CONTINUE MATTER BEFORE THE BOARD AND FOR PARTIAL SUMMARY JUDGMENT

Pursuant to National Labor Relations Board ("Board") Rule 102.24(b) and the Notice to Show Cause issued by the Board on May 14, 2018, and within the time called for in the Notice to Show Cause, Respondent Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino ("GVR" or "Employer") hereby responds to the Motion to Transfer and Continue Matter Before the Board and for Partial Summary Judgment ("Motion") filed by the General Counsel for the National Labor Relations Board.

I. INTRODUCTION

The General Counsel's Motion treats this matter as though it is a pure test of certification case. It is not. GVR does continue to maintain that the International Union of Operating Engineers Local 501, AFL-CIO ("Union") cannot represent the petitioned-for unit. But even if the Union were properly certified, its requests seek information about social security numbers, employees outside the bargaining unit (the Union was certified as the representative of approximately 13 out of 1750 employees), irrelevant policies that do not apply to bargaining unit employees, confidential contracts with third-parties which have no bearing on bargaining unit employees, and a host of other information that is neither necessary nor relevant to the Union's role as bargaining representative. Accordingly, because this matter raises factual issues on which summary judgment cannot be granted, the General Counsel's Motion should be denied.

II. FACTUAL BACKGROUND

A. The Union Petitions to Represent a Unit of Guards

On August 3, 2017, the Union filed a petition for an election to represent a unit of:

> All full-time, regular part-time, and extra board slot technicians and utility technicians employed by the Employer at its Henderson, Nevada facility, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

GVR objected to the election on the basis that the unit consisted of guards and could therefore not be represented by the Union (the Union admits non-guards to membership). On August 16, the Regional Director for Region 28 overruled GVR's objections and directed an election.

An election was held on August 25, and the Union received a majority of the votes cast. After overruling the Employer's objections to the election, the Region certified the Union on October 16. GVR filed a request for review on October 27, which was denied by the Board on November 30.

Because GVR continues to maintain that the Union cannot represent the petitioned-for unit, and because there is no direct appeal of a representation proceeding, GVR is engaged in a technical refusal to bargain with the Union. After GVR refused to recognize the Union, the Union filed an unfair labor practice charge under Section 8(a)(5) of the Act, and a complaint was subsequently issued. On April 12, 2018, the Board granted summary judgment on that complaint. *Station GVR Acquisition, LLC*, Case No. 28-CA-214925. GVR has now appealed the Board's summary judgment decision to the D.C. Circuit, where it is currently pending (the Union has filed a competing petition for review in the Ninth Circuit, which the General Counsel has properly moved to dismiss as the Union is not an aggrieved party).

B. The Union Sends Unintelligible Requests for Information

Shortly after winning the election, the Union sent the requests for information that form the basis of the Complaint. (Ex. A.) The requests are unintelligible. At the outset of its letter, the Union claims that a majority of all employees at GVR have signed authorization cards recognizing the Union as their bargaining representative. No reference is made to the election, or to the actual bargaining unit that the Union petitioned to represent (which covers employees in two classifications, and who collectively make up less than 1% of the total number of employees at the facility). After defining a purported bargaining unit with no basis in reality, the Union then requested the following information:

> (1) A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and social security number;
>
> (2) Copies of all current job descriptions;
>
> (3) Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last 24 months;
>
> (4) A copy of all company fringe benefit plans including retirement, sick time, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, education, legal services, child care or any plans which relate to the employees;
>
> (5) Copies of any company wage or salary plans;
>
> (6) A copy of all current company personnel policies, practices and procedures;
>
> (7) Copies of all contract agreements related with Property and sub-contractors, e.g. IGT and Scientific Gaming and/or owner(s);
>
> (8) Copies of all Covenants, Conditions and Restrictions (CCR) and/or any additional information related to said agreements in the above; and
>
> (9) Complete Enclosed Employer Contact Information Request Form (E411)

On August 30, 2017, GVR's counsel informed the Union's representative that it would contest the Union's certification at the Board and federal Court of Appeals levels, and was therefore declining the Union's demand to bargain. (Ex. B.) On November 6, the Union

renewed its information demand, and the Employer's counsel again informed the Union's representative that it was declining the Union's demand to bargain pending the outcome of Board and/or federal appellate review. (Ex. C.) On March 8, 2018, the Union sent an additional request for information, and the Employer again informed the Union that it was declining to bargain because it contested the Union's certification, but would of course satisfy any order entered by a federal appellate court. (Ex. D.)

On April 27, 2018, Region 28 issued the Complaint in this matter. Like the Union's initials demands, the Complaint does not limit the scope of the information requests to the actual bargaining unit purportedly represented by the Union. (Ex. 7 to Motion, at ¶¶ 6(a)-(e).) On May 3, 2018, the Employer filed its Answer. (Ex. 9 to Motion). In addition to asserting that the certification of the Union was improper, the Answer expressly denies the allegation in paragraph 6(c) of the Complaint that the requested information is "necessary for, and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit." (Exs. 7 and 9 to Motion).

III. SUMMARY JUDGMENT IS NOT APPROPRIATE BECAUSE THERE ARE DISPUTED ISSUES OF MATERIAL FACT

The Board will grant a motion for summary judgment only if there are "no genuine issues of material fact warranting a hearing" and the moving party "is entitled to judgment as a matter of law." *E.g. L'hoist N. Am. of Tennessee, Inc.*, 362 NLRB No. 110 (June 5, 2015). Summary judgment is properly denied where the motion itself, or the opposing party's response, indicate on their face that a genuine issue may exist. Rule 102.24(b).

Contrary to the General Counsel's contention, this is not merely a test of certification case. Even if the certification of the Union is ultimately upheld by the D.C. Circuit, there are unresolved issues of material fact as to whether the requested information is necessary and

relevant to collective bargaining. For instance, both the Union's information demand and the General Counsel's Complaint purport to seek the personal information of 1700-plus employees *not* represented by the Union, as well as every disciplinary notice or warning issued to any of those employees within the preceding two years. Likewise, the requests seek "all current company personnel policies, practice, and procedures," ranging from discipline to guest room attendants for failing to clean an expected number of rooms, to uniforms for cocktail waitresses, to food preparation standards. The Employer is unaware – and the General Counsel has certainly failed to demonstrate – why these requests are necessary and relevant for collective bargaining. Similarly, even if limited to actual bargaining unit employees, there has been no showing that employee social security numbers are necessary, and such information is not presumptively relevant. *See, e.g. Maple View Manor, Inc*., 320 NLRB 1149, 1152 n.2 (1996). Resolution of these issues requires a factual determination under Board law *See Broden, Inc*., 318 NLRB No. 112 (Sept. 12, 1995) (charge alleging failure to furnish information presented factual issues not amenable to summary judgment where employer made objections of overbreadth, vagueness, confidentiality, and lack of presumptive relevance).

Likewise, the requests seek a host of confidential information, including internal "wage or salary plans," confidential policies related to ensuring the security and integrity of the Company's gaming machines, information about the competitive terms that GVR has negotiated with its third-party vendors, and the precautions that GVR takes to combat illegal gaming activity and money laundering. It is axiomatic that the balancing test required for the production of such information is fact-intensive inquiry reserved to the trier of fact. *Jacksonville Area Ass'n for Retarded Citizens*, 316 NLRB 338, 340 (1995) ("In making [confidentiality] determinations,

the trier of fact must balance the union's need for the information sought against the legitimate and substantial confidentiality interests of the employer.").

Accordingly, while the Employer continues to maintain the Union was improperly certified, there are additional factual issues in this case which preclude summary judgment even if the certification of the Union is ultimately upheld. [1]

CONCLUSION

For the reasons set forth above, the General Counsel's Motion should be denied.[2]

Respectfully Submitted,

Date: May 25, 2018

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[1] If the Union's certification is upheld, it is possible that the parties and/or General Counsel may negotiate a mutually-agreeable narrowing of the Union's requests, with appropriate confidentiality protections. But both Board and federal law prohibit from the Employer from engaging in such negotiations while it is engaged in a technical refusal to bargain, upon pain of waiving its challenge to the certification. *See, e.g., Technicolor Government Services, Inc. v. NLRB,* 739 F.2d 323, 326-327 (8th Cir. 1984)*; King Radio Corp. v. NLRB,* 398 F.2d 14, 20 (10th Cir. 1968)*; NLRB v. Blades Mfg. Corp.,* 344 F.2d 998, 1005 (8th Cir. 1965)*; Queen of the Valley Med. Ctr.,* JD-15-18, 2018 WL 1110298 (Feb. 28, 2018) (fact that employer responded to and provided information in response to union's request for information supported that the employer recognized the union, and therefore waived any challenge to certification).

[2] GVR opposes the Union's Joinder and Request for Remedies. Not only are the remedies sought by the Union unwarranted, but they mostly consist of special remedies requiring specific factual support and as such are not appropriate for summary judgment.

Attorneys for Employer,
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CERTIFICATE OF SERVICE

I hereby certify this 25th day of May, 2018, that a copy of the Response to General Counsel's Motion to Transfer and Continue Matter Before the Board and for Partial Summary Judgment and associated exhibits was electronically served on the Board through the Board's electronic filing system, and served via e-mail on:

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